

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

IN RE: **CHARLES EVANS TRUCKING, INC.** **CASE NO. 18-50885 KMS**
DEBTOR **CHAPTER 7**

**MOTION FOR AUTHORITY TO SELL
PROPERTY FREE AND CLEAR OF LIENS**

Chapter 7 Trustee, Kimberly R. Lentz (“Trustee”) files this Motion for Authority to Sell Property Free and Clear of Liens pursuant to §363(b) and §363 (f) of the *United States Bankruptcy Code*, Rules 6004, 2002(a)(2), 2002(c)(1) and 9014 of the *Federal Rules of Bankruptcy Procedure* and Miss. Bankr. L.R. 9014-1 as follows:

1. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1334. This Court has the statutory authority to enter a final order in connection with this matter pursuant to 28 U.S.C. §157(b)(2) (A), (N) and (O). This Court has the constitutional authority to enter a final order in connection with this matter.
2. Charles Evans Trucking, Inc. (“Debtor”) filed a petition for relief under Chapter 7 of the *Bankruptcy Code* on May 4, 2018. Kimberly R. Lentz is the duly appointed and acting trustee of the Debtor’s bankruptcy estate.
3. The Debtor owns the vehicles, equipment and trailers itemized on Exhibit “A” attached hereto which are valued at approximately \$623,000.00 (“Trucking Assets”). The Trucking Assets are subject to a lien in favor of the Bank of Wiggins.
4. The Trustee requests authority to sell the Trucking Assets to Big Level Trucking, Inc., a Mississippi corporation (“Purchaser”), for the purchase price of \$576,500.00.
5. The Trustee requests that the sale be free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. §363(f), except as set forth in Paragraph 6 below and with the exception of the lien held by the Bank of Wiggins’ lien in the approximate amount of \$480,000.00. Said lien is recognized as being valid and is expressly preserved and the debt secured by said lien

is to be assumed by the Purchaser, Big Level Trucking, Inc. In addition to the assumption by the Purchaser of the existing loan which will be renewed, extended and/or modified, the Bank of Wiggins will make a new loan to the Purchaser for the additional funds necessary to complete the proposed sale. Any costs of transferring title, any federal or state excise tax, highway tax, fuel, IFTA, petroleum tax or other taxes applicable to common carriers will be borne by the Purchaser. The bankruptcy estate will receive a net amount of \$101,500.00 without reduction of any kind.

6. Ramco, Inc. DBA Pinebelt Oil (“Pinebelt Oil”) is the Debtor’s only scheduled unsecured creditor. Prior to the filing of the Petition for Relief, Pinebelt Oil filed a civil action in the Circuit Court of Lamar County, Mississippi styled *Ramco, Inc. et. al. v. Charles Guy Evans & Sons, Inc. et. al.* Cause No:37:16cv086 (“State Court Action”)¹ against the Debtor and other Defendants, including the Purchaser. On account of the allegations of Pinebelt Oil in the State Court Action, including, but not limited to, allegations made after the filing of the State Court Action, and on account of any potential claims of the bankruptcy estate against the Purchaser and other persons and entities, in the event of entry a judgment in the State Court Action in favor of Pinebelt against Purchaser or in the event any claims are made against Purchaser by the Trustee, neither Pinebelt nor the Trustee shall have the right to levy, resort to or execute as to the Trucking Assets on account of the sale being free and clear of all liens, interests and encumbrances as to the Trucking Assets only.

7. The Bank of Wiggins, Pinebelt, the Debtor and Purchaser have consented to the sale on terms set forth herein and will approve and sign the order approving the sale.

¹

The State Court Action was removed to the United States District Court for the Southern District of Mississippi and assigned No:2:18-cv-00081-KS-MTP. On August 1, 2018, the District Court entered an Order Granting Motion for Referral to Bankruptcy Court. The civil action was assigned Adversary Proceeding No. 18-06031.

8. The sale shall be closed within three business days of entry of an order approving the sale, unless the order is subject to a stay of the Bankruptcy Court, the District Court or the Fifth Circuit Court of Appeals. The sale shall be closed at 2505 14th Street, Ste. 500, Gulfport, Mississippi, 39501.

9. Section 363(b)(1) of the *Bankruptcy Code* provides that (after notice and a hearing) “the Trustee may use, sell or lease, other than in the ordinary course of business, property of the estate.” In addressing the standards of a § 363(b) sale, the Fifth Circuit has held:

A sale of assets under § 363, as implemented by rule 6004, requires notice and a hearing and is subject to court approval and must be supported by an articulated business justification, good business judgment, or sound business reasons (citing *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). A trustee has the duty to maximize the value of the estate (citing *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 353, 105 S. Ct. 1986, 85 L. Ed. 2d 372 (1985)). As a general matter, the trustee must demonstrate that the proposed sale price is the highest and best offer, though a bankruptcy court may accept a lower bid in the presence of sound business reasons, such as substantial doubt that the higher bidder can raise the cash necessary to complete the deal. (citing 3 COLLIER ON BANKRUPTCY P 363.02[1][f] (15th ed. rev. 2009)).

The Cadle Co. v. Mims (In re Moore), 608 F.3d 253, 263 (5th Cir. 2010). See also *In re VCR I, LLC*, 2018 WL 2094301 (Case No. 12-02009 EE, S.D. Miss. 2018).

10. The Trustee believes that the sale of the Trucking Assets on the terms set forth above is in the best interest of the bankruptcy estate, the creditors and all parties-in-interest and should be approved by the Court.

11. The Trustee requests authority to execute and deliver to the Purchaser conveyance and transfer documents necessary to consummate the transaction.

12. The Trustee requests this Court to authorize the consummation of the sale without subjecting the order to a stay of execution, as permitted under Rules 7062 and 6004(h) of the *Federal Rules of Bankruptcy Procedure*.

WHEREFORE, Kimberly R. Lentz, Chapter 7 Trustee, requests the Court to enter an order granting the relief requested above and further grant the Trustee all other relief to which she is entitled, given the premises.

Respectfully Submitted,

**KIMBERLY R. LENTZ, CHAPTER 7
TRUSTEE**

By: /s/ Kimberly R. Lentz
Kimberly R. Lentz

OF COUNSEL:

William J. Little, Jr., MSB No. 1287
Kimberly R. Lentz, MSB 8986
W. Jarrett Little, MSB No. 104812
Lentz & Little, PA
2505 14th Street, Suite 500
Gulfport, Mississippi 39501
(228) 867-6050
kim@lentzlittle.com

CERTIFICATE OF SERVICE

I, Kimberly R. Lentz, do hereby certify that the following have been served electronically via ECF with a copy of the foregoing document:

United States Trustee: USTPRegion05.JA.ECF@usdoj.gov
Walter Newman, attorney for the Debtor: wnewman95@msn.com
Robert A. Byrd, attorney for Pinebelt Oil: rab@byrdwiser.com

I further certify that I mailed a true and correct copy of the foregoing document to:

Charles Evans Trucking, Inc.
P. O. Box 306
Wiggins, MS 39577

William Wessler, Esq.
Attorney for Bank of Wiggins
1624 24th Avenue
Gulfport, MS 39501

M. Garner Berry
Markow Walker, P.A.
Post Office Box 13669
Ridgeland, MS 39157

This the 10th day of October, 2018.

/s/ Kimberly R. Lentz
Kimberly R. Lentz

TRACTOR & TRAILER TITLE LIST

Unit #	YEAR	MAKE	MODEL	BODY	VIN#	VALUE	NOTES
Bulk Trailers							
1	7724	1981	FRUE	TRL	TL	1H4B04126BK015724	\$23,000 SOLD To Mobile Abrasives
2	7538	1975	BUIC	S13	TL	5385345	\$17,000
3	7163	1979	BUIC	102	TL	2163B45	\$20,000
4	7216	1979	BUIC	102	TL	2169B45	\$20,000
5	7341	1974	BUTL	IDE	TN	3416245	\$17,000
6	7191	1972	BUTL	IDE	TN	1916245	\$16,000
7	7876	1979	BUIC	102	TL	8760745	\$18,000
8	7616	1980	UL	BUL	TL	A4000616	\$20,000 Wrecked
9	7601	1978	FRUE	CNC	TL	0M2903601	\$18,000
Pole Trailers							
10	8010	1983	LUG	SPS	TL	1L01B432XD1061924	\$10,000
11	8006	1986	HMCE	TRR	TL	TST477164SPLA	\$10,000
12	8014	1986	HOME	POL	TL	M8615625TC	\$7,500
13	8015	1987	HMCE	WD	TR	M8610295TC	\$7,500
14	8020	1968	HILL	POL	TL	MSA8764	\$7,500
15	8011	1980	DATS	266	TL	OS50X1080	\$7,500
Lowboy Trailer							
16	8001	2003	PITT	K34	TL	SIYKB41272P030616	\$10,000
17	8003	2004	EVAN	D45	TL	U9Y145B640003500	\$15,000
Dump Trailer							
18	1C02	1991	PALM	TAZ	TL	1P924551/MAC003202	\$10,000
19	1C04	2003	HMCE	9	9	MS03HMIC090002331	\$6,500
Flatbed Trailer							
20	5501	2000	UTL	FLA	TL	1UYFS2486YA361501	\$7,500 Sold to Navistar Financial
21	5502	2000	UTL	FLS	TL	1UYFS2488YA361502	\$7,500 Sold to Navistar Financial
22	5503	2000	UTL	N/A	TR	1UYFS248XYA361503	\$7,500 Sold to Navistar Financial
23	5504	2000	UTL	FLA	TL	1UYFS2481YA361504	\$7,500 Sold to Navistar Financial
24	5505	2000	UTL	FL	TL	1UYFS2483YA361505	\$7,500 Sold to Navistar Financial
25	5506	2000	UTL	FLA	TL	1UYFS2485YA361506	\$7,500 Sold to Navistar Financial
26	5801	2003	U	N/A	TR	1UYFS24883A149501	\$10,500
27	5802	2003	U	N/A	TR	1UYFS248X3A149502	\$10,500
28	5803	2003	U	N/A	TL	1UYFS24813A149503	\$10,500
29	5804	2003	U	N/A	TR	1UYFS24833A149504	\$10,500
30	5805	2003	U	N/A	TL	1UYFS24853A149505	\$10,500
31	5806	2003	U	N/A	TR	1UYFS24873A149506	\$10,500
32	5807	2003	U	N/A	TR	1UYFS24893A149507	\$10,500
33	5701	2001	U	N/A	TR	1UYFS24821A667701	\$8,000
34	5702	2001	U	N/A	TL	1UYFS24881A667702	\$8,000
35	5703	2001	U	N/A	N	1UYFS24861A667703	\$8,000
36	5704	2001	U	N/A	TL	1UYFS24881A667704	\$8,000
37	5706	2001	U	N/A	TR	1UYFS24811A667706	\$7,500
38	5707	2003	U	FLT	TL	1UYFS24843A997701	\$10,500
39	5708	2003	U	N/A	TL	1UYFS24833A997702	\$10,500
40	5709	2003	U	N/A	TL	1UYFS24883A997703	\$9,500
41	5710	2003	U	N/A	TL	1UYFS248X3A997704	\$9,500
42	5711	2003	U	N/A	TL	1UYFS24813A997705	\$9,500
43	5712	2003	U	N/A	TR	1UYFS24833A997706	\$9,500
Van Trailer							
44	9112	2000	UT	NA	TR	1UYVS2537YP110112	\$7,500 Wrecked
45	9603	1999	UT	NA	TR	1UYVS2533XP859603	\$8,500 Wrecked
Cattle Trailer							
46	9998	1997	MERR	TRL	TL	1MT2N5022VH010912	\$20,000
Trucks							
47	3180	2007	P17B	J/J	DS	1XP5DB9X07N736180	\$42,500
48	3409	2003	P17B	J/J	DS	1XP5DB9X33N596409	\$24,925
49	3609	2007	P17B	J/J	DS	1XP5DB9X37NG8609	\$42,500

Total Asset Value: \$623,425.00

Big Level Trucking Offer for Assets listed above: \$576,668.13 As of 4/29/18

Bank of Cappins Line of Credit/Loan #89802500 Principle Balance: \$475,211.64 As of 4/29/18

Equity: \$101,456.49

EXHIBIT**A**